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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Northeast Nebraska Telephone Company)
)
Petition for Waiver of the Four Digit Carrier)
Identification Code (CIC) Implementation)
Schedule for Three Exchange Areas:)
Dixon-Concord, Nebraska)
Jackson-Hubbard, Nebraska)
Craig, Nebraska)

CC Docket No. 92-237

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To: Network Services Division
Common Carrier Bureau

PETITION FOR WAIVER

Northeast Nebraska Telephone Company (Northeast), by its attorney, pursuant to 47 C.F.R.

§ 1.3,¹ hereby petitions the Commission for a waiver of the four digit Carrier Identification Code

¹ 47 C.F.R. § 1.3 provides

§1.3 Suspension, amendment, or waiver of rules. - The provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.

While it does not appear that the four digit CIC implementation is incorporated into the Commission's rules, there is no reason to conclude that 47 C.F.R. § 1.3 does not permit waiver of uncodified rules or policies. Informal discussions with the staff indicated that petitions for waiver of the four digit CIC implementation schedule would be entertained; the staff's position is supported by precedent. See e.g. Southwestern Bell Telephone Company Tariff F.C.C. No. 73, 1997 FCC LEXIS 3686 (Comm. Car. Bur. July 14, 1997) (DA 97-1472) (para. 13) ("Under Section 1.3 of our rules, the Commission may waive any provision of its rules or orders if 'good cause' is shown.")

(CIC) implementation requirement contained in the Commission's Second Report and Order (Second Report and Order), 7 CR 709 (Comm'n 1997). Northeast requests a waiver so that CIC compliance is not required until June 30, 1998.² In support whereof, the following is respectfully submitted:

1) Northeast is a rural local telephone exchange carrier located in northeastern Nebraska. Northeast has 4120 access lines in twelve exchanges. The Dixon-Concord exchange has 316 access lines, the Jackson-Hubbard exchange has 544 access lines, and the Craig exchange has 289 access lines. The three captioned exchanges have been providing equal access service since their conversion on April 15, 1997.³ Northeast implemented equal access in these exchanges without receiving a request for equal access from any carrier. The switching equipment providing equal access in each of the three captioned exchanges is not capable of handling four-digit CICs at this time.

2) Shortly after the Commission released its April 1997 order implementing the accelerated four-digit CIC conversion, Northeast commenced negotiations to replace the switching equipment at the three exchanges.⁴ Because the switching equipment had reached the end of its useful life, Northeast determined that it would need to order completely new switching equipment for the

² The Order indicates that "a LEC that determines that it will not meet the January 1, 1998 conversion deadline must seek relief from the Commission prior to that date." Order, at ¶ 24.

³ Balloting commenced approximately six months earlier. It is only happenstance that the conversion of these three exchanges to equal access occurred four days after the release of the Second Report and Order.

⁴ The Dixon-Concord exchange switch is a remote switch, its host being the Jackson-Hubbard switch. The Craig switch is a stand alone switch.

Dixon-Concord and the Jackson-Hubbard exchange offices. Negotiations relating to the switch purchases for Dixon-Concord and Jackson-Hubbard exchanges took place over a period of several months and concluded on October 14, 1997 when Northeast ordered new, four-digit CIC capable, switching equipment. The switching equipment is scheduled to be delivered by mid-December 1997. Installation is scheduled for mid-February 1998.⁵

3) Negotiations for the Craig exchange switch are on-going. Northeast's board of directors are scheduled to vote on the most recent equipment proposal at their next board meeting on November 18, 1997. It is anticipated that the new, four-digit CIC compliant switch for the Craig exchange will be ordered shortly thereafter and delivered in early 1998. Installation is expected to occur during the first quarter of 1998. Craig will come into compliance with the four-digit CIC requirement through the installation of hardware and software upgrades or through the installation of an entirely new switch. Thus, Northeast hereby requests a six month extension of the four digit CIC conversion, until June 30 1998, in which to complete the four digit CIC conversion for these three exchanges.

4) On October 22, 1997 the Commission released its Order on Reconsideration, Order on Application for Review, and Second Further Notice of Proposed Rulemaking (Order) (FCC 97-386) which reviewed the implementation schedule for the four digit CIC conversion. The Commission found that

a requirement that all LEC end office switches be upgraded to accept four-digit CICs by January 1, 1998 may have the unintended effect of requiring those LECs that have never received a bona fide request for equal access or that are not subject to a specific timetable for

⁵ Because new switching equipment is being installed, a much more complicated process than merely upgrading software to meet CIC compliance, installation will take several weeks.

providing equal access nonetheless to upgrade their end offices to offer equal access by January 1, 1998. Such a requirement would modify the Commission's equal access implementation schedule

Order, at ¶ 84. The Order provides further that

LECs that do not currently provide equal access, because they never receive a bona fide request to do so, are not required to meet the January 1, 1998 conversion date. In referring to LECs in the discussion that follows in this Order on Reconsideration, we mean LECs that currently provide equal access and, therefore, that are subject to the January 1, 1998 conversion date.

Order, at n. 75.

5) A reading of these passages suggests that because Northeast has “never received a bona fide request for equal access,” it does not have to implement four-digit CIC capability by January 1, 1998. Thus, it may be that Northeast does not require a waiver of the four-digit CIC implementation schedule. However, out of an abundance of caution, Northeast is submitting the instant waiver request.⁶ Northeast respectfully submits that grant of a waiver would serve the public interest.

6) The Second Report and Order explains that CICs “are numeric codes that, as originally devised, enabled local exchange carriers (LECs), as providers of interexchange access services, to identify access customers in order to bill and route traffic to such customers. CICs facilitate competition by enabling callers to use the services of any number of telecommunications service

⁶ In order to obtain a waiver pursuant to 47 C.F.R. § 1.3 the petitioner must demonstrate that special circumstances warrant deviation from the rules or orders and that such a deviation would better serve the public interest than the general rule. Moreover, grant of a waiver presumes the validity of the general rule, must not undermine the policy served by the rule, and must not be so broad as to eviscerate the rule. Rather, the request must be tailored to the specific contours of the exceptional circumstances. Southwestern Bell Telephone Company Tariff F.C.C. No. 73, 1997 FCC LEXIS 3686 (Comm. Car. Bur. July 14, 1997) (DA 97-1472) (para. 13) (footnote omitted).

providers.” Second Report and Order, at ¶ 1. The Second Report and Order notes that “demand for CICs has grown” and that “implementation of the Telecommunications Act of 1996 . . . most likely will increase the number of telecommunications carriers entering the market and create an increased need for CICs so that traffic can be routed to these new entities.” Second Report and Order, ¶ 3. The Second Report and Order shortened the “six-year transition to a two-year and nine month transition” “because of the changing circumstances since the record in this docket closed in 1994.” Second Report and Order, ¶ 4. Thus, the policy served by the Commission’s accelerated four digit CIC implementation schedule is to foster competition in the interexchange markets.

7) As discussed above, the policy objective underlying four digit CIC conversion is the expansion of competition in the interexchange market. The purpose of this rule would not be thwarted by grant of the requested waiver. Northeast has never received a request to provide equal access and, to date, no interexchange (IXC) carrier with a four digit CIC has shown any interest in serving Northeast's exchange areas. While it may be theoretically possible that an interexchange carrier with a four digit CIC would request access to Northeast’s exchange between now and June 30, 1998, such a possibility seems remote at best. Even if such a request were received, Northeast’s exchange areas are very small markets and the public interest would not be adversely affected by the slight extension requested herein. This is especially true in view of the fact that the interexchange carriers have until June 30, 1998 in which to change from three to four-digit CICs. Accordingly, because Northeast is providing equal access on a voluntary basis, because no carrier has requested equal access, because Northeast would generally not be required to provide equal access until three years after receiving a bona fide request for access, and because IXCs have until June 30, 1998 in which to convert their own services to four-digit CICs, competition in the interexchange market will

not be harmed by the limited extension of time to implement the four-digit CIC capability requested herein.⁷

8) The Commission notes in the Second Report and Order that it is providing a twenty-three month four digit CIC conversion implementation schedule, Second Report and Order, ¶ 4, presumably because the Commission proposed the conversion in the 1994 Notice of Proposed Rulemaking, 9 FCC Rcd. 2068. However, from an LEC manager's point of view, only an eight month transition period has been provided. Oft stated Commission policy is that items discussed in notices of proposed rulemaking are not binding because there is no assurance that the rule or policy will be adopted as proposed. See e.g., Multimedia, Inc., 11 FCC Rcd 4883, 4892 ¶ 27 (Comm'n 1995) (an applicant "is not entitled to rely on our Further Notice of Proposed Rulemaking, which represents proposed policy and not existing law. An applicant before the Commission is not entitled to the benefit of a policy not yet adopted.")

9) It was reasonable for carriers to have concluded that the transition period would commence upon release of a report and order. The underlying Notice of Proposed Rule Making does not indicate that the transition period would begin running while the Commission considered the matter over several years, especially where the Notice of Proposed Rulemaking extolled the virtues of lengthening the transition period from 18 months to six years. Notice of Proposed Rulemaking, 9 FCC Rcd. at 2077 ¶ 54. Moreover, manufacturers and carriers did not learn of the "changing


⁷ In addition to affording Northeast permission to postpone implementation of the four digit CIC conversion thereby permitting Northeast to remain compliant with the Commission's requirements, grant of the waiver would permit Northeast to demonstrate to interested carriers that Northeast's traffic may be carried during the waiver period without four digit CICs without risk of possible Commission sanctions.

circumstances” which the Commission indicated warranted a shorter transition period until the Commission released the April 1997 Second Report and Order. Thus, while the Commission may have discussed the possibility of requiring new equipment and software in 1994, the Commission’s proposal did not crystallize until the release of the April 1997 Second Report and Order and LECs could not reasonably rely upon the 1994 Notice of Proposed Rulemaking to order equipment and schedule installation. Northeast is proceeding with deliberate speed given the “changing circumstances” and even though it is not required to provide equal access.

10) The facts disclosed herein reveal that Northeast is sincerely interested in providing four digit CIC capability as soon as practicable. No interexchange carrier has requested that Northeast implement equal access and grant of the instant waiver will not interfere with competition in the interexchange market. Accordingly, it is respectfully submitted that Northeast has presented unique and compelling circumstances demonstrating good cause that grant of the instant waiver request would serve the public interest.⁸

Respectfully submitted,
NORTHEAST NEBRASKA TELEPHONE COMPANY

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Timothy E. Welch

November 5, 1997

Its Attorney

⁸ A copy of the instant petition for waiver is being served upon Geraldine Matise, Chief, Network Services Division, 2000 M Street, N.W. #235.

CERTIFICATION

I hereby certify under penalties of perjury that I have reviewed the forgoing PETITION FOR WAIVER and that except for those matters about which official notice may be taken, the statements made therein are true and accurate to the best of my knowledge, information, and belief.


Emory Graffis, General Manager
Northeast Nebraska Telephone Company

November 4, 1997

[The original signature will be filed upon receipt by counsel.]